

REMARKS

Pursuant to the Examiner's Election of Species Requirement regarding (1) various PKC Activators and (2) various diseases (see Office Action, page 2), Applicants hereby provisionally elect, without traverse, macrocyclic lactones as the PKC activator and Alzheimer's disease, as the disease, with traverse.

Applicants respectfully traverse the Examiner's Election of Species Requirement with respect to the various disease species election, because the Examiner has not demonstrated that a search and/or examination of the additional species would impose a serious burden. The Examiner has not provided evidence sufficient to support a *prima facie* showing that a search and/or examination of the claimed invention would impose a serious burden. In order to establish a serious burden, Examiner must make a *prima facie* case by showing separate classification, separate status in the art, or a different field of search. (MPEP § 808.02). It is also well established that a reasonable number of species may be claimed in one application. (See MPEP § 806.04; 37 C.F.R. §1.141). Furthermore, the search with respect to all of the identified species in claim 48, for example, would be coextensive, especially in light of Applicants' election of macrocyclic lactones. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding election of species requirement.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Director is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 13-3250, reference No. 17357.01001. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).


If the Examiner finds that a telephone conference would further prosecution of this application, she is invited to contact the undersigned at 202-835-7553.

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY LLP

Date: April 20, 2009

By:


Einar Stole
Registration No., 47,272

Customer No. 38647

MILBANK, TWEED, HADLEY & McCLOY LLP

1850 K St., NW Suite 1100

Washington, DC 20006

Tel. No. (202) 835-7500

Fax No. (202) 835-7586